



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2018-0786; FRL-10002-90-Region 6]

Air Plan Approval; Oklahoma; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Oklahoma for the 2015 Ozone (O₃) National Ambient Air Quality Standard (NAAQS). This submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2015 O₃ NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Oklahoma SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2018-0786, at <http://www.regulations.gov> or via email todd.robert@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio,

video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Robert Todd, (214) 665-2156, *todd.robert@epa.gov*. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The docket index and publicly available docket materials for this action are available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6 Office, 1201 Elm St., Suite 500, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Robert Todd, EPA Region 6 Office, Infrastructure & Ozone Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214-665-2156, *todd.robert@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Mr. Todd or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: In this document “we,” “us,” and “our” means the EPA.

I. Background

Below is a short discussion of background on the 2015 Ozone NAAQS addressed in this action. For more information, please see the Technical Support Document (TSD) in the docket for this action.

Following a periodic review of the 2008 NAAQS for O₃, EPA revised the primary and secondary O₃ NAAQS to 0.070 ppm (80 FR 65291, October 26, 2015).¹ The primary NAAQS is designed to protect human health, and the secondary NAAQS is designed to protect the public welfare.²

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an “infrastructure SIP” or “i-SIP”. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.³ We are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.⁴ The EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

¹ Additional information on the history of the NAAQS for ozone is available at <https://www.epa.gov/ozone-pollution/table-historicalozone-national-ambient-air-quality-standardsnaaqs>.

² Information on ozone formation and health effects is available at <https://www.epa.gov/ozonepollution>.

³ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA’s prior action on Louisiana’s infrastructure SIP to address the 2006 PM_{2.5}, 2008 PB, 2008 O₃, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS (81 FR 68322 (October 4, 2016)).

⁴ See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (Aug. 30, 2018).

The State of Oklahoma's i-SIP certification, submitted on October 25, 2018, provides a demonstration of how the existing Oklahoma SIP meets the applicable section 110(a)(2) requirements for the 2015 O₃ NAAQS. Our technical evaluation of the submittal is provided in the TSD for this action.⁵

Each state must submit a SIP within three years after the promulgation of a new or revised NAAQS showing how it meets the elements of section 110(a)(2) of the CAA. This section of the CAA includes a list of specific elements necessary for a state's air quality program. We term this SIP an infrastructure SIP or i-SIP. On September 13, 2013, the EPA issued guidance addressing the i-SIP elements for NAAQS.⁶ On October 25, 2018, the Oklahoma Secretary of Energy and the Environment made one submission to address the 2015 NAAQS for O₃.⁷ The submittal addressed CAA sections 110(a)(2)(A) through (M).

We are proposing that CAA section 110(a)(1) and parts of section 110(a)(2) are met by the State. Specifically, we are proposing to approve the state's compliance with CAA sections 110(a)(1) and 110(a)(2)(A) through (C) and (E) through (M). In this action we are also proposing to approve Oklahoma's representations that CAA sections 110(a)(2)(D)(i)(II), Interference with Prevention of Significant Deterioration (often referred to as prong 3) and 110(a)(2)(D)(ii), Interstate Pollution Abatement (which refers to CAA section 126) and International Air Pollution (which refers to CAA section 115) requirements are met. The remaining portions of the October 25, 2018, submittal, addressing CAA section 110(a)(2)(D)(i)(I), often referred to as prongs 1 and

⁵ The TSD for this action can be accessed through www.regulations.gov (Docket No. EPA-R06-OAR-2018-0786).

⁶ "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

⁷ Additional information, including the history of the priority pollutants, their levels, the forms of the standard and the determination of compliance; EPA's approach for reviewing the i-SIP submittal and EPA's evaluation; the statute and regulatory citations in the Oklahoma SIP specific to the review of this i-SIP, applicable CAA and EPA regulatory citations, Federal Register citations for the Oklahoma SIP approvals; Oklahoma minor New Source Review program and EPA approval activities, and Oklahoma's Prevention of Significant Deterioration program can be found in the TSD for this action.

2, and CAA section 110(a)(2)(D)(i)(II), often referred to as prong 4, will be addressed in subsequent actions. A copy of the State's entire submittal is provided in the docket for this proposed rulemaking.

II. EPA's Evaluation of the Oklahoma 2015 O₃ NAAQS Submission

Below is a summary of our evaluation of the October 25, 2018, Oklahoma submittal for each element of 110(a)(2) that we are proposing to approve.⁸

(A). *Emission limits and other control measures*: The SIP must include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, as may be appropriate to meet the applicable requirements of the Act and other related matters as needed to implement, maintain and enforce each of the NAAQS.⁹

The Oklahoma Environmental Quality Act, the Oklahoma Environmental Quality Code, the Oklahoma Clean Air Act (OCAA) and other portions of the Oklahoma's Administrative Code (OAC), including the rules of Practice and Procedure (OAC 252:4) and the Air Pollution Control Rules (OAC 252:100) provide the Oklahoma Department of Environmental Quality (ODEQ or State) and its staff the legal authority needed to implement, maintain and enforce the NAAQS within Oklahoma. They may adopt emission standards and compliance schedules applicable to regulated entities; emission standards and limitations and any other measures necessary for attainment and maintenance of national standards; and enforce applicable laws, regulations, standards and compliance schedules, and seek injunctive relief. This authority has been employed in the past to adopt and submit multiple revisions to the Oklahoma SIP. The federally-

⁸ A detailed discussion of our evaluation can be found in the TSD for this action.

⁹ The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2015 Ozone NAAQS. Those SIP provisions are due as part of each state's attainment plan and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

approved SIP for Oklahoma is documented at 40 CFR part 52.1920. The State's air quality rules and standards are codified at Title 252 of the Oklahoma Administrative Code (denoted here as OAC 252). Numerous parts of these regulations necessary for implementing and enforcing the NAAQS have been already been adopted into the SIP. (See the TSD to this proposal for a thorough discussion of the State's authorities.)

(B) Ambient air quality monitoring/data system: The SIP must provide for establishment and implementation of ambient air quality monitors, collection and analysis of ambient air quality data, and providing such data to EPA upon request.

The Oklahoma Clean Air Act provides the authority allowing the ODEQ to collect air monitoring data, quality-assure the results, and report the data. ODEQ maintains and operates a monitoring network to measure levels of ozone, as well as other pollutants, in accordance with EPA regulations specifying siting and monitoring requirements. All monitoring data is measured using EPA approved methods and subject to the EPA quality assurance requirements. ODEQ submits all required data to us, following the EPA regulations. The Oklahoma statewide monitoring network was approved into the SIP on May 31, 1972 (37 FR 10842, 10887), was revised on March 28, 1979 (44 FR 18490), and it undergoes annual review by EPA.¹⁰ In addition, ODEQ submits an assessment of its monitoring network every five years, as required by EPA rules. The most recent of these annual monitoring network assessments was submitted by ODEQ and approved by us October 15, 2018. The most recent of the five year monitoring assessments was submitted by ODEQ and approved by us July 22, 2016. The ODEQ website

¹⁰A copy of the 2018 Annual Air Monitoring Network Plan and our approval letter, as well as the most recent five year assessment and approval letter, are included in the docket for this proposed rulemaking.

provides the monitor locations and posts past and current concentrations of criteria pollutants measured by the State's network of monitors.¹¹

(C) Program for enforcement of control measures: The SIP must include the following three elements: (1) A program providing for enforcement of the measures in CAA section 110(a)(2)(A); (2) a minor new source review (NSR) program for the regulation of new and modified minor stationary sources and minor modifications of new major stationary sources as necessary to protect the applicable NAAQS; and (3) a major stationary source permit program to meet the prevention of significant deterioration (PSD) permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question). Each of these elements is described in more detail in the TSD for this action.

(1) Enforcement of SIP measures: The state must provide a program for enforcement of the necessary control measures described in subparagraph (A). As noted earlier, the OCAA provides authority for the ODEQ, and its Executive Director, to enforce the requirements of the OCAA, and any regulations, permits, or final compliance orders. These statutes also provide the ODEQ with general enforcement powers. Among other things, they can file lawsuits to compel compliance with the statutes and regulations; commence civil actions; conduct investigations of regulated entities; collect criminal and civil penalties; develop and enforce rules and standards related to protection of air quality; issue compliance orders; pursue criminal prosecutions; investigate, enter into remediation agreements; and issue emergency cease and desist orders. The OCAA also provides additional enforcement authorities and funding mechanisms.

(2) Minor New Source Review (NSR). The SIP is required to include measures to regulate construction and modification of minor stationary sources and minor modifications to major

¹¹ See <https://www.deq.ok.gov/air-quality-division/ambient-monitoring/>

stationary sources to protect the NAAQS. The Oklahoma minor NSR permitting requirements are approved as part of the SIP.¹²

(3) *PSD permit program for major stationary sources.* The Oklahoma PSD portion of the SIP covers all NSR regulated pollutants as well as the requirements for the 2015 O₃ NAAQS. However, in order for the State's PSD permitting program to fully meet the requirements of 110(a)(2)(C)(3), our recent proposal to approve the state's adoption by reference of the Guideline to Air Quality Models, 2017 Appendix W, 40 CFR part 51, must be approved. We proposed to approve the updated version of Oklahoma's PSD program December 3, 2019.¹³

(D) *Interstate and international transport:* The requirements for interstate transport of O₃ emissions are that the SIP contain adequate provisions prohibiting O₃ emission transport to other states which will (1) contribute significantly to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with measures required to prevent significant deterioration or (4) interfere with measures to protect visibility (CAA 110(a)(2)(D)(i)). In addition, states must comply with requirements to prevent transport of international air pollution (CAA section 110(a)(2)(D)(ii)). As noted earlier, EPA often refers to these four requirements within CAA section 110(a)(2)(D)(i) as prongs or sub-elements. We are not evaluating prongs 1, 2, and 4 in this rulemaking action, but will address them in separate actions. However, we are proposing to approve prong 3 of CAA section 110(a)(2)(D)(i), pertaining to interference with measures to prevent significant deterioration in other states for O₃. Oklahoma has a SIP-

¹² EPA is not proposing in this action to approve or disapprove the existing Oklahoma minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs for EPA to approve the infrastructure SIP for element C, program for enforcement of control measures (*e.g.*, 76 FR 41076–41079). The statutory requirements of section 110(a)(2)(C) of the Act provide for considerable flexibility in designing minor NSR programs. See the TSD for more information.

¹³ For details of our proposed action, please see 84 FR 66103, December 3, 2019 and the materials provided in the associated docket number EPA-R06-OAR-2018-0208 available at <https://www.regulations.gov/>.

approved PSD program that regulates all NSR pollutants, and thus, prevents significant deterioration in nearby states. See the TSD for more detail.

Section 110(a)(2)(D)(ii) of the CAA requires SIPs to include adequate provisions to ensure compliance with sections 115 and 126 of the Act, relating to international and interstate pollution abatement. Section 115 of the Act addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. There are no final findings by the EPA that Oklahoma air emissions affect other countries. Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. The Oklahoma SIP requires that each major proposed new or modified source provide such notification.¹⁴ The State also has no pending obligations under CAA section 126. See the TSD for more detail.

(E) Adequate authority, resources, implementation, and oversight: The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements relating to state boards; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan. Both elements (A) and (E) address the requirement that there is adequate authority to implement and enforce the SIP and that there are no legal impediments. The i-SIP submission for the 2015 O₃ NAAQS describes the SIP regulations governing the various functions of personnel within the ODEQ, including the administrative, technical support, planning, enforcement, and permitting functions of the program. With respect to funding, state law establishes the ODEQ's authority to accept

¹⁴ See EPA docket number EPA-R06-OAR-2018-0208.

and expend funds necessary to carry out the requirements of the Act. The ODEQ receives air quality program funds through state appropriations, permit application fees, annual operating fees, and federal grants. As required by the CAA, the Oklahoma Environmental Quality Code lays out the composition, powers and duties of the state's Environmental Quality Board and the Air Quality Council. The members of the board and council are required to abide by conflict of interest provisions for DEQ staff and the DEQ Executive Director as described in the state's statutes. The requirement to comply with the section 128 (State boards) of the Act is met.¹⁵ With respect to assurances that the State has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, the ODEQ is the primary air pollution control agency and does not rely on local or regional boards to implement any portion of the portion of the state's air quality implementation plan. More detail is provided in the TSD for this action.

(F) Stationary source monitoring system: The SIP must provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times. The OCAA authorizes the ODEQ to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. There also are SIP-approved state regulations pertaining to sampling and

¹⁵ Last approved by EPA at 81 FR 89008, December 9, 2016.

testing and requirements for reporting of emissions inventories. In addition, SIP-approved rules establish general requirements for maintaining records and reporting emissions. The ODEQ uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels and determining compliance with SIP-approved regulations and additional EPA requirements. The SIP requires this information be made available to the public. Provisions concerning the handling of confidential data and proprietary business information are included in the SIP-approved regulations. These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources. More detail and links to Oklahoma's emissions data are provided in the TSD for this action.

(G) Emergency authority: The SIP must provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment and to include contingency plans to implement such authorities as necessary. The OCAA provides ODEQ with authority to address environmental emergencies, and ODEQ has an "emergency episode plan," which includes contingency plans which are included in the SIP (56 FR 5656, February 2, 1991). The ODEQ has authority to respond to possible dangerous ozone air pollution episodes if necessary to protect the environment and public health.

(H) Future SIP revisions: States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS. The OCAA authorizes the ODEQ to revise the SIP, as necessary, to account for revisions of an existing NAAQS, establishment of a new NAAQS, to attain and maintain a NAAQS, to abate air

pollution, to adopt more effective methods of attaining a NAAQS, and to respond to EPA SIP calls concerning NAAQS adoption or implementation.

(I) Nonattainment areas: The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. EPA does not expect infrastructure SIP submissions to address CAA section 110(a)(2)(I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will act on any part D nonattainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.¹⁶

(J) Consultation with government officials, public notification, PSD and visibility protection: The SIP must meet the following three CAA requirements: (1) section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; (3) prevention of significant deterioration of air quality; and (4) visibility protection.

(1) Interagency consultation: As required by the OCAA, there must be a public hearing before the adoption of any regulations or emission control requirements, and all interested persons are given a reasonable opportunity to review the action that is being proposed and to submit data or arguments, either orally or in writing, and to examine the testimony of witnesses from the public hearing. In addition, the OCAA provides the ODEQ the power and duty to advise, consult, and cooperate with other agencies of the State, towns, cities, counties, other states, the federal government and other interested persons or groups in regard to matters of

¹⁶ Oklahoma does not presently have any designated ozone nonattainment areas.

common interest in the field of air quality control. Furthermore, the Oklahoma PSD SIP rules mandate that the ODEQ shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Manager (FLMs) whose lands may be affected by emissions from the source or modification. Additionally, the State's PSD SIP rules require the ODEQ to consult with FLMs regarding permit applications for sources with the potential to impact Class I Federal Areas. The SIP also includes a commitment to consult, as required, with the FLMs on the review and implementation of the visibility program. The State recognizes the expertise of the FLMs in monitoring and new source review applicability analyses for visibility and has agreed to notify the FLMs of any advance notification or early consultation with a new or modifying source prior to the submission of a permit application.

(2) *Public Notification:* ODEQ regularly notifies the public of instances or areas in which any NAAQS are exceeded. Included in the SIP are the rules for ODEQ to advise the public of the health hazard associated with such exceedances; and enhance public awareness of measures that can prevent such exceedances and of ways in which the public can participate in the regulatory and other efforts to improve air quality. In addition, as discussed earlier for CAA section 110(a)(2)(B), the ODEQ air monitoring website provides air quality data for each of the monitoring stations in Oklahoma; this data is provided in real time for certain pollutants, such as ozone. The website also provides information on the health effects of lead, ozone, particulate matter, and other criteria pollutants.

(3) *PSD*: The PSD requirements for this sub-element are the same as those addressed earlier under CAA section 110(a)(2)(C), *Program for enforcement of control measures*. The State has a SIP-approved PSD program. This requirement is met.¹⁷

(4) *Visibility Protection*: The ODEQ SIP requirements relating to visibility protection are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of the NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to CAA section 110(a)(2)(J).

(K) *Air quality and modeling/data*: The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

The ODEQ has the power and duty, under OCAA to conduct air quality research and assessments, including the causes, effects, prevention, control and abatement of air pollution. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, ODEQ can perform modeling for primary and secondary NAAQS on a case-by-case permit basis consistent with their SIP approved PSD rules and with EPA guidance.¹⁸

The OCAA authorizes and empowers the ODEQ to cooperate with the federal government and local authorities concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA.

¹⁷ For details of our recent proposed action to update the state SIP with regard to PSD, please see 84 FR 66103, December 3, 2019 and the materials provided in the associated docket number EPA-R06-OAR-2018-0208 available at <https://www.regulations.gov/>.

¹⁸ Note that our recent proposed action to update the state SIP included citations adopting the most current version of EPA's Guideline on Air Quality Models at 40 CFR part 51, 2017 Appendix W. See 84 FR 66103.

(L) Permitting Fees: The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

With respect to funding, the OCAA and the SIP provide the ODEQ with authority to hire. The EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement and enforce the SIP.

Oklahoma's statutes authorize ODEQ "to promulgate rules regarding permit fees and ... establish that the owner or operator of any source required to have a permit must pay a permit fee to cover the cost of implementing and enforcing Oklahoma's Air Quality permit program." The OCAA provides the ODEQ with authority to hire and compensate employees; accept and administer grants or other funds; requires the ODEQ to establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs; and authorizes the ODEQ to collect additional fees necessary to cover reasonable costs associated with processing air permit applications and the costs of implementing and enforcing the terms and provisions of the permits. The state has in place fee programs for major and minor sources of air pollution, as well as an area source operating fee program that covers other sources in the state. This requirement is met.¹⁹

(M) Consultation/participation by affected local entities: The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

¹⁹ Last approved by EPA at 81 FR 89008, December 9, 2016.

See the earlier discussions for CAA sections 110(a)(2)(J), sub-elements (1) and (2) for a description of the SIP's public participation process, the authority to advise and consult, and the PSD SIP's public participation requirements. Additionally, the OCAA requires cooperative action between ODEQ and local authorities, other agencies of the State, other states, Indian Tribes, other affected groups and the federal government in the prevention and control of air pollution.

III. Proposed Action

EPA is proposing to approve portions of the October 25, 2018, Oklahoma i-SIP submittal for the 2015 ozone NAAQS as detailed in Table 1, below. The portions of the submittal dealing with CAA section 110(a)(2)(D)(i)(I), prongs 1 and 2, Significant Contribution to Nonattainment and Interference with Maintenance in other States, and CAA section 110(a)(2)(D)(i)(II), prong 4, Interference with Visibility Protection in other States will be addressed in separate, future actions.

Table 1: Proposed Action on Oklahoma Infrastructure and Transport SIP Submittals for the 2015 Ozone NAAQS

Element	Proposed Action
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii): PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	SA
(D)(i)(II): PSD (prong 3)	A
(D)(i)(II): Visibility Protection (prong 4)	SA
(D)(ii): Interstate and International Pollution Abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+

(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table 1:

A: Proposing to Approve

+: Not germane to infrastructure SIPs

SA: EPA is acting on this infrastructure requirement in a separate rulemaking action.

Based upon review of the State's infrastructure SIP submission and relevant statutory and regulatory authorities and provisions referenced in this submission or referenced in the EPA-approved ODEQ SIP, EPA believes that Oklahoma has the infrastructure in place to address all applicable required elements of CAA sections 110(a)(1) and (2), except as noted above, to ensure that the 2015 O₃ NAAQS is implemented in the State. However, as mentioned above, our approval of this proposed action is dependent upon finalization of our proposal to approve updates to Oklahoma's new source review permitting requirements. (see 84 FR 66103, December 3, 2019).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 23, 2019.

Kenley McQueen,

Regional Administrator, Region 6.

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